

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOUGLAS C. STAFFORD,

Plaintiff,

v.

GENEXEL-SEIN, INC.
d.b.a. KOREA TECHNOLOGY
INDUSTRY CO., LTD,

Defendant.

ORDER

09-cv-621-bbc

Plaintiff Douglas C. Stafford filed this civil action on October 9, 2009, invoking the court's diversity jurisdiction. Plaintiff brings a state breach of contract claim against defendant GenExel-Sein, a South Korean corporation. However, because plaintiff's complaint failed to provide the proper allegations to support diversity jurisdiction, I instructed him to provide facts verifying the diversity of citizenship between himself and defendant. Now plaintiff has responded, submitting evidence that he and defendant have diverse states of citizenship. Therefore, I conclude that jurisdiction is present under 28 U.S.C. § 1332.

The next step is for plaintiff to serve his complaint on the defendants. Because it

appears that plaintiff will be serving defendant in a foreign country, the normal 120-day time limit under Fed. R. Civ. P. 4(m) to serve the complaint does not apply. However, plaintiff is still required to act diligently in serving defendant; failure to do so could result in dismissal of the case. To help plaintiff understand the procedure for serving his complaint, I am enclosing with this order a copy of the court's "Procedure for Serving a Complaint on a Foreign Corporation, Partnership or Unincorporated Association in a Federal Lawsuit." The clerk of court has already provided plaintiff with the form he will need to send to defendant in accordance with the procedures set out in Option 1 that document.

ORDER

IT IS ORDERED that plaintiff promptly serve his complaint on defendant and file proof of service of his complaint as soon as service has been accomplished. If, by January 22, 2010, plaintiff fails to submit proof of service of his complaint on the defendants or explain his inability to do so, I will direct plaintiff to show cause why his case should not be

dismissed for lack of prosecution.

Entered this 23rd day of October, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge

PROCEDURE FOR SERVING A COMPLAINT ON
A FOREIGN CORPORATION, PARTNERSHIP OR
UNINCORPORATED ASSOCIATION IN A FEDERAL LAWSUIT

A plaintiff suing a foreign corporation, partnership or unincorporated association in federal court may satisfy the service requirements of Fed. R. Civ. P. 4 by following one of two procedures.

Option One

Plaintiff may notify a defendant corporation, partnership, or association's "officer, managing or general agent or other agent authorized by appointment or law to receive service of process" in writing of the filing of his lawsuit and request that the defendant waive service of a summons. Fed. R. Civ. P. 4(d)(1). If plaintiff chooses this method of service, plaintiff must

- complete an original and one copy of a form titled "Notice of a Lawsuit and Request to Waive Service of a Summons" (blank notice forms are attached to this document);
- address a large envelope to the officer, managing or general agent or other agent and place the following documents inside:
 - a) an original and one copy of the completed notice form;
 - b) a blank form titled "Waiver of Service of Summons" (also accompanying this memorandum);
 - c) a copy of the complaint filed in federal court; and
 - d) a self-addressed, stamped envelope for the defendant's use in returning the waiver form;
- mail the envelope to the officer or agent by first-class mail or other reliable means;
- "give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the United States—to return the waiver" (Fed. R. Civ. P. 4(d)(1)(F)).
- mail a copy of the signed waiver form to the court for filing as proof of service.

Option Two

Note well: This procedure need not be followed unless a defendant refuses to complete and return a waiver form as described above.

Plaintiff may arrange to serve the foreign corporation, partnership or association with a summons and complaint. Fed. R. Civ. P. 4(h). These methods vary depending on whether plaintiff will be serving the defendant within the United States or whether plaintiff will be serving the defendant in a foreign country. If plaintiff is serving defendant within the United States, plaintiff must

- complete a summons form for the defendant (summons forms are available on request from the clerk of court);
- present the completed summons form to the clerk of this court to obtain his signature and an imprint of the court's seal;
- arrange for someone over the age of 18 years of age who is not a party to the lawsuit to
 - a) deliver the signed and sealed summons and a copy of the complaint to an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant, Fed. R. Civ. P. 4(h)(1)(B); or
 - b) serve defendant in accordance with state law, Fed. R. Civ. P. 4(h)(1)(A); Wis. Stat. § 801.11;
- file with the court an affidavit of the person who effected service of the summons and complaint upon defendant stating the time and date the delivery was made and with whom the summons and complaint was left, or showing a receipt signed by the defendant's officer, managing or general agent or any other agent authorized by appointment or by law to receive service of process, or other evidence of delivery. Fed. R. Civ. P. 4(l).

If plaintiff is serving defendant in a foreign country, plaintiff must

- complete a summons form for the defendant (summons forms are available on request from the clerk of court);
- present the completed summons form to the clerk of this court to obtain his signature and an imprint of the court's seal;
- serve the complaint "in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(I)." This is most commonly done by using "any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents." Information about foreign service can be found at the U.S. State Department's website: http://www.travel.state.gov/law/info/judicial/judicial_680.html
- prove service was accomplished by following Fed. R. Civ. P. 4(l)(2).